

This letter discusses various issues related to the purchase of motor vehicles. See 86 Ill. Adm. Code 130.605. (This is a GIL).

June 12, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 12, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Our Department receives several inquiries regarding vehicles, boats, aircraft and trailers purchased out-of-state by residents of STATE. We are in the process of updating our information on how your state treats such purchases by non-residents of your state for sales/use tax purposes.

1. Does your state have an applicable sales/use tax exemption available if an STATE resident purchases a motorized vehicle in your state, and immediately transports the vehicle out of your state, to be registered and titled out of state?

Yes _____ No _____

2. Can an STATE purchaser obtain a refund from your state (assuming sales tax was paid at time of purchase, per #1 above) if they did not register or title the motor vehicle in your state and registered, titled and paid tax in STATE?

Yes _____ No _____

3. If answer in #2 above is 'Yes,' from whom must the purchaser request the refund?

Dealer/Merchant _____ State Taxing Authority _____

4. Are military persons 'stationed' in your state **required** to register their vehicles in your state if their 'home of record' is in another state?

Yes _____ No _____

Are there options? If so, explain _____

5. What percentage is the sales tax rate for your state?

_____ %

6. If an STATE resident purchases a motor vehicle in STATE, pays the STATE 5% sales tax, registers and titles the vehicle in STATE, then later moves to your state and your tax rate is higher than 5%, would you allow full credit for the 5% already paid to STATE or prorate the sales tax?

Full _____ Prorate _____ No Credit _____

Explain, if needed

7. Is the sales/use tax due on a taxable lease transaction in your state a direct obligation of the lessee or the lessor in your state?

Lessee _____ Lessor _____

8. In #6 above, is the sales tax calculated and paid on the 'flow' of lease payments or does the sales tax all become due up front at the lease inception?

Flow _____ Up front _____

9. Often we find it beneficial to have a 'contact' person with other agencies in order to discuss various scenarios and tax treatments, without the need to divulge confidentiality of individual taxpayer information. As such, we would appreciate having someone in your State familiar with taxation of motor vehicles we could contact from time to time as the need may arise. Please complete the following information.

Contact Person: _____, Title: _____
Phone: (____) _____ Fax: (____) _____
E-Mail: _____

Please contact me if you have any questions concerning this topic.

Question 1: The Department's regulation, 86 Ill. Adm. Code 130.605, Sales of Property Originating in Illinois, states that where tangible personal property is located in this State at the time of its sale (or is subsequently produced in Illinois), and then delivered in Illinois to the purchaser, the sale is taxable if the sale is at retail. The sale is not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of such property in this State. This is so notwithstanding the fact that the purchaser may, after receiving physical possession of the property in this State, transport or send the property out of the State for use outside the State or for use in the conduct of interstate commerce.

There are two exceptions to the rule that the sale is not deemed to be a sale in interstate commerce if the purchaser or his representative receives physical possession of the property in Illinois. The first exception is relevant to your inquiry and states as follows:

“Effective July 23, 1971, the tax is not imposed upon the sale of a motor vehicle in this State to a nonresident even though such motor vehicle is delivered to such nonresident in this State, if such motor vehicle is not to be titled in this State, and if a driveaway decal permit is issued to such motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the other vehicle upon returning to his home state. The issuance of the driveaway decal permit shall be prima facie evidence that such motor vehicle will not be titled in this State. For purposes of this subsection (a)(4)(A), the term ‘motor vehicle’ does not include ‘watercraft’ or ‘personal watercraft’ as defined in the Boat Registration and Safety Act [625 ILCS 45] or any boat equipped with an inboard motor.”

Question 2: The scenario that you describe in question 2 should not ordinarily occur in Illinois. If a purchaser plans to title and register the motor vehicle he purchases in Illinois in another state, he should request that the retailer deliver the motor vehicle to him out of state, obtain driveaway decals for the motor vehicle, or affix vehicle registration plates from another state. None of these arrangements would involve paying Illinois sales tax. However, if the purchaser does pay Illinois sales tax upon taking delivery of the motor vehicle in Illinois, and transports the motor vehicle out of state, he may not obtain a refund of the tax paid. This is because the tax is properly due. In many states, the purchaser would be allowed a credit for tax properly due and paid in Illinois.

Question 3: See Question 2, above.

Question 4. The Department of Revenue does not administer the Illinois Vehicle Code. We refer you to the Illinois Secretary of State for information regarding motor vehicle registration.

Question 5: The Illinois state rate of sales tax is 6.25%. There is also a low rate of tax at 1% for food, drugs, and medical appliances.

Question 6: The Department’s regulation at 86 Ill. Adm. Code 150.310(a)(3) provides that tax shall not apply to the use of tangible personal property in this State when the tangible personal property has been acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another state in respect to this sale, purchase or use of such property, to the extent of the amount of such tax properly due and paid in such other state. For this purpose, “state” includes the District of Columbia.

Section 150.315(a) provides that “[t]he Use Tax does not apply to the use, in this State, of tangible personal property which is acquired outside this State by a nonresident individual who then brings the property to this State for use here, and who shall have used the property outside this State for at least 3 months before bringing the property to this State.”

Question 7: In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the property to be leased. As the end users of tangible personal property located in Illinois, lessors incur Use Tax on the lessors’ cost price of the property. The only exception is automobiles rented for one year or less, which are subject to Automobile renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. Since lessors are considered the end users of the property and

have paid the use Tax, no Retailers' Occupation Tax is imposed upon the lease receipts and the lessees incur no use Tax liability for the lease charges. In Illinois, a true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

The alternative to a true lease is a conditional sale. In Illinois, a conditional sale is usually characterized by a nominal purchase option at the close of the lease term. This type of transaction is considered a conditional sale at the outset of the transaction making all receipts subject to Retailers' Occupation Tax. In this situation, lessors/retailers may give Certificates of Resale to their suppliers for tangible personal property transferred subject to a conditional sales agreement. Tax on motor vehicles has to be paid up front at one time.

Question 8: In Illinois, there is no sales tax on lease payments. Under a true lease the tax due for the purchase of the motor vehicle is due from the lessor up front.

Question 9: See below.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.